



**REPORT TO
THE MINISTER OF FINANCE**

**REQUEST FOR TARIFF RELIEF BY
PEERLESS CLOTHING INC.
REGARDING
CERTAIN WOVEN FABRICS AND
WARP-KNIT FABRICS**

OCTOBER 29, 1998

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INTRODUCTION

On July 14, 1994, the Canadian International Trade Tribunal (the Tribunal) received terms of reference¹ from the Minister of Finance (the Minister) pursuant to section 19 of the *Canadian International Trade Tribunal Act*.² The Minister directed the Tribunal to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister.³

Pursuant to the Minister's reference, the Tribunal received, on September 11, 1997, a request⁴ from Peerless Clothing Inc. (Peerless) of Montréal, Quebec, for the removal, for an indeterminate period of time, of the customs duty on importations from all countries of certain woven fabrics and warp-knit fabrics. On March 17, 1998, the Tribunal, being satisfied that the request was properly documented, issued a notice of commencement of investigation, which was widely distributed and published in the March 28, 1998, edition of the *Canada Gazette*, Part I.⁵ The fabrics under investigation, for use as interlinings in the production of men's suits, jackets and blazers (the subject fabrics), were described in the notice as follows:

woven fabric, twill weave, loosely woven, solely of untwisted textured polyester filament yarns, partially coated with hot melt adhesive, of tariff item No. 5407.51.90 or 5903.90.29 [hereinafter referred to as fabric B131] [of the schedule to the *Customs Tariff*⁶]; warp-knit fabric, solely of polyester textured and non-textured filament yarns, partially coated with hot melt adhesive, of tariff item No. 5903.90.29 or 6002.43.90 [hereinafter referred to as fabric 3249]; warp-knit fabric, stitch-bonded, solely of polyester filaments and polyester staple fibres, partially coated with hot melt adhesive, of tariff item No. 5903.90.29 or 6002.43.90 [hereinafter referred to as fabric V901]; and warp-knit fabric, stitch-bonded with polyester filament yarns, containing a web of polyester staple fibres with inserted weft core spun yarns consisting of nylon monofilament, wrapped with polyester staple fibres and covered with viscose rayon staple fibres, of tariff item No. 6002.43.90 [hereinafter referred to as fabric R791].

As part of the investigation, the Tribunal's research staff sent questionnaires to potential producers of fabrics identical to or substitutable for the subject fabrics. A request for information was also sent to potential users and a number of potential importers of the subject fabrics. A letter was sent to the Department of National Revenue (Revenue Canada) requesting information on the tariff classification of the subject fabrics, and samples were provided for laboratory analysis. Letters were also sent to a number of other government departments requesting information and advice.

A staff investigation report, summarizing the information received from these departments, Peerless and other interested parties, was provided to those interested parties that had filed notices of appearance in the investigation, thereby becoming "parties" to the proceedings.

1. On March 20 and July 24, 1996, and on November 26, 1997, the Minister of Finance revised the terms of reference.

2. R.S.C. 1985, c. 47 (4th Supp.).

3. Previously, concessionary tariff codes generally provided for reduced rates of duty or free entry for a wide range of goods for specified uses. As of January 1, 1998, provisions which are still relevant have been converted, in whole or in part, to regular items in the tariff schedule at the same concessionary rates. Consequently, where a favourable recommendation for tariff relief is accepted, a new tariff item is used in the tariff schedule to distinguish it from other fabrics.

4. Further amendments were filed with the Tribunal on February 17 and March 5, 1998.

5. Vol. 132, No. 13 at 701.

6. R.S.C. 1985, c. 41 (3rd Supp.).

Following distribution of the staff investigation report, Canada Hair Cloth Company, division of DHJ Canada, Inc. (CHC), Canada Pad Linings Inc. (Canada Pad) and Peerless filed submissions with the Tribunal. Pursuant to a request by Peerless, the Tribunal agreed to schedule a one-day public hearing to obtain evidence and hear arguments in respect of the following issues:

- (1) the substitutability of textile inputs made by CHC with those imported by Peerless;
- (2) CHC's ability to meet the Canadian market demand for interlinings; and
- (3) the economic impact that would result if the requested tariff relief were granted.

By letters dated July 30 and September 9, 1998, counsel for Peerless advised the Tribunal that a settlement agreement had been reached between Peerless and CHC, as well as Canada Pad, with respect to the request for tariff relief. Under the agreement, CHC and Canada Pad supported, or at least no longer opposed, the request for tariff relief for three of the fabrics covered by the investigation, namely, fabrics B131, 3249 and V901. With respect to fabric R791, Peerless agreed to discontinue its request for tariff relief. As part of the agreement, the parties agreed to specific wording and proposed specific tariff items,⁷ as set out below, for fabrics used as interlinings in the manufacture of men's apparel:

Fabric B131

Woven fabric of textured polyester filament yarns, partially coated with hot melt adhesive, with a 4 percent minimum stretch in the warp and a 12 percent minimum stretch in the weft as measured by ASTM specification D3107-75, the product weight exceeding 70 g/m², but not exceeding 95 g/m², of tariff item No. 5407.51.20;

Woven fabric of textured polyester filament yarns, partially coated with hot melt adhesive, with a 4 percent minimum stretch in the warp and a 12 percent minimum stretch in the weft as measured by ASTM specification D3107-75, the product weight exceeding 70 g/m², but not exceeding 95 g/m², of tariff item No. 5903.90.22;

Fabric 3249

Warp-knit fabric of textured and non-textured polyester filament yarns, partially coated with hot melt adhesive, with a 4 percent minimum stretch in the warp and a 12 percent minimum stretch in the weft as measured by ASTM specification D3107-75, the product weight exceeding 70 g/m², but not exceeding 95 g/m², of tariff item No. 5903.90.23;

Warp-knit fabric of textured and non-textured polyester filament yarns, partially coated with hot melt adhesive, with a 4 percent minimum stretch in the warp and a 12 percent minimum stretch in the weft as measured by ASTM specification D3107-75, the product weight exceeding 70 g/m², but not exceeding 95 g/m², of tariff item No. 6002.43.40; and

Fabric V901

Warp-knit fabric of polyester filaments and polyester staple fibres, partially coated with hot melt adhesive, the product weight not exceeding 55 g/m², of tariff item No. 5903.90.24; and

Warp-knit fabric of polyester filaments and polyester staple fibres, partially coated with hot melt adhesive, the product weight not exceeding 55 g/m², of tariff item No. 6002.43.50.

In light of the foregoing, the hearing was cancelled at the request of Peerless.

7. The tariff items have been proposed by the interested parties; however, new tariff items are established by the Minister.

PRODUCT INFORMATION

Currently, Peerless imports the subject fabrics from offshore. The fabrics are used in the manufacture of men's suits, jackets, blazers and trousers. All cutting, sewing, finishing and quality control of end products are performed in Peerless's Montréal factory.

As of January 1, 1998, the subject fabrics classified under classification No. 5407.51.90.12 are dutiable at 16.0 percent *ad valorem* under the MFN tariff and at 12.5 percent *ad valorem* under the Mexico tariff and the Chile tariff and are duty free under the US tariff and the Canada-Israel Agreement tariff. The subject fabrics classified under classification No. 5903.90.29.00 are dutiable at 16.0 percent *ad valorem* under the MFN tariff; at 10.0 percent *ad valorem* under the GPT; and at 8.0 percent *ad valorem* under the Mexico tariff and the Chile tariff and are duty free under the US tariff, the Least Developed Country tariff and the Canada-Israel Agreement tariff. The subject fabrics classified under classification No. 6002.43.90.29 are dutiable at 16.0 percent *ad valorem* under the MFN tariff and at 10.0 percent *ad valorem* under the Mexico tariff and the Chile tariff and are duty free under the US tariff and the Canada-Israel Agreement tariff. The MFN tariff for these fabrics is still subject to yearly reductions and will be 14.0 percent by 2004.

REPRESENTATIONS

Users of the Subject Fabrics

Peerless

Peerless has been manufacturing men's apparel since 1919. The company is privately owned and employs in excess of 2,000 people. Following the *Canada-United States Free Trade Agreement*,⁸ Peerless established itself as an international manufacturing and marketing company, with a significant presence in the market for men's wool suits in the United States.

Prior to its agreement with CHC and Canada Pad, Peerless argued, in its submissions to the Tribunal, that the evidence on the record establishes that there is no production in Canada of identical or substitutable fabrics because: (1) no claims of substitutability were made with respect to fabric V901; (2) two-way stretch fusible interlinings, such as fabrics B131 and 3249, are not produced in Canada; and (3) CHC has provided no real evidence of commercial and technical substitutability regarding fabric R791.

Peerless submitted that the removal of the customs duty on imports of the subject fabrics will lower costs, which will allow it to lower its wholesale price and compete more effectively with imports of the finished products. Peerless indicated that the benefits will be passed on to the consumer. Peerless also claimed that, with the elimination of the Duty Drawback Program, it will be at a price disadvantage in the US market if tariff relief is not provided and that, as a result, its export sales to the United States will be adversely affected.

Peerless argued that CHC does not manufacture, and CHC admitted that it does not manufacture, a full range of interlinings and has chosen, instead, to supplement its line of products with production from affiliated companies. Peerless indicated that there is no evidence on the record that Weston Apparel Manufacturing Company, Division of Dylex Limited (Weston), which supports the request for tariff relief but also claims that there are Canadian substitutes, has ever purchased two-way stretch fusible interlinings and that Weston does not manufacture suits of the same quality and, therefore, does not require the same

8. *Canada Treaty Series*, 1989, No. 3 (C.T.S.).

fusible interlinings, including two-way stretch fusible interlinings. Peerless argued that the use of quality interlinings is widespread in the manufacture of higher-quality suits, such as those produced by Peerless.

Peerless submitted that CHC has provided no quantifiable evidence regarding any negative effects of the tariff relief requested because it does not manufacture substitutable fabrics.

With respect to the information submitted by Freudenberg Nonwovens (Freudenberg), a US manufacturer of interlinings, Peerless indicated that this evidence is irrelevant to the case at hand. Peerless pointed out that the information on the record concerning pricing is evidence that domestically produced fabrics are not substitutable for the subject fabrics. Peerless noted that CHC is already subject to duty-free competition from US imports, including fabrics exported by Freudenberg, and that, therefore, the likelihood of losing all sales due to tariff relief is extremely unlikely.

Weston

Weston, of Toronto, Ontario, a manufacturer of men's suits, jackets and trousers since 1979, stated that it supports the request for tariff relief because it would be beneficial to the industry. Weston indicated that it currently purchases woven fabrics from both CHC and Kufner Textiles Inc. Quebec (Kufner) and stitch-bonded warp-knit fabrics from Freudenberg. Weston stated that fabrics identical to the subject fabrics are not produced in Canada, but that substitutable fabrics are available. It submitted that, because of high prices, Weston does not use the textured polyester fabrics imported by Peerless, but that, if the duties on the fabrics were removed, it would consider changing its sourcing. Weston pointed out that the textured polyester fabrics are of a superior quality because: (1) when fused, they bring out a richness to the "feel" of the fabric, i.e. fuller hand that is not as flat as certain other fusible interlinings; (2) pressing impressions on the face of the outer fabric are easier to eliminate; and (3) they have stretching characteristics that make them ideal for stretch fabrics, such as Lycra blends.

Domestic Producers of Allegedly Identical or Substitutable Fabrics

CHC, of St. Catharines, Ontario, has 58 production employees and has been manufacturing shape-retaining fabrics (suit interlinings) for 114 years. In 1996, CHC was purchased by Lainière de Picardie (LDP), of France, a major producer and supplier of interlinings around the world. LDP also has production facilities in Alabama. CHC stated that, since December 1997, it has introduced five new fabrics from the LDP product line to serve the Canadian and US markets. As a result, CHC stated that its domestic and export sales have increased.

CHC opposed the original request for tariff relief because it would result in the loss of production, sales, market share and jobs in the St. Catharines plant. CHC submitted that, with recent plant investments, technology transfers and an enhanced product line, it is equipped to meet virtually all the interlining needs of the men's clothing industry in Canada. CHC claimed that it produces woven fabrics (samples F149, F188, F265 and F59), used as front fusible interlinings, substitutable for fabrics B131 and 3249 imported by Peerless. It also claimed that it produces woven fabrics (samples AF2 and 1640) substitutable for fabric R791 imported by Peerless. CHC stated that it does not produce fabrics substitutable for fabric V901, nor does it intend to do so in the near future.

CHC pointed out that, up to and including 1988, it had sold interlinings to Peerless in large volumes, but that Peerless ceased purchasing domestic interlinings and switched to imports which qualified for duty

drawbacks.⁹ CHC also indicated that, when Peerless's imported purchases are excluded from the marketplace, CHC holds a significant share of the apparent market for the subject fabrics. CHC stated, however, that, although Peerless is not inclined to purchase domestic fabrics, it hoped to re-establish a working relationship with the company. In this context, and in light of the fact that LDP does business with Peerless, CHC invited Peerless to limit the scope of the description of the subject fabrics in the hope of reaching a solution satisfactory to the interested parties. As indicated earlier, after some negotiation, a settlement agreement was reached with Peerless with respect to three of the fabrics for which Peerless was seeking tariff relief.

Matador Converters Co. Ltd., of Montréal, and Texel Inc., of Saint-Elzéar, Quebec, wrote to the Tribunal indicating that they did not oppose the request for tariff relief. The Rumpel Felt Co. Ltd., of Kitchener, Ontario, and Union Felt Products Inc., of Downsview, Ontario, indicated that they did not have an interest in this investigation.

Other Submissions

Canada Pad, of Montréal, specializes in the cutting and sewing of interlinings for the men's apparel industry. Canada Pad was created in 1996 as a result of the sale of the former Canada Pad division of CHC. The company employs 27 people and has recently made some new investments in computerized markers and grading and sewing equipment.

Canada Pad stated that it has been granted exclusive distribution, with certain exceptions, of CHC interlinings in Canada. Canada Pad indicated that, with the backing of LDP, CHC has made significant improvements in the quality of its product line and has manufactured new products which Canada Pad will be introducing to the market. In this context, Canada Pad is forecasting double-digit sales increases in the current year.

While Canada Pad opposed the original request for tariff relief because its main competition is from interlinings produced in Germany and other Western European countries and, therefore, because the elimination of duties would jeopardize its new operation and that of its supplier, it was, nevertheless, a party to the agreement reached in respect of three of the subject fabrics.

Freudenberg, of Durham, North Carolina, a manufacturer of woven and warp-knit fabrics, as well as nonwoven stitch-bonded fabrics, for use as interlinings in men's garments, stated that it opposes the request by Peerless because there are a number of producers within the NAFTA region that can supply manufacturers of men's suits, jackets and blazers. In this connection, Freudenberg indicated that it is about to market a range of fabrics (SD, RD and KD series) that are substitutable for those imported by Peerless. It also pointed out that it produces and sells a 9000 series (nonwoven stitch-bonded fabrics) which is substitutable for the subject fabrics.

Handler Textile (Canada) Inc., of Montréal, stated that, although it imports the subject fabrics duty free from the United States, it supports the request by Peerless because tariff relief will be of benefit to manufacturers which import the subject fabrics from other countries and, moreover, because it will save jobs in an environment of global competition.

Kufner, of Dorval, Quebec, was established in 1985. It imports the subject fabrics and sells them to manufacturers of men's suits, jackets and blazers. Kufner supported the request for tariff relief and claimed

9. Tribunal Exhibit TR-97-006-30.

that high-quality interlinings are not available from domestic producers. It stated that tariff relief would lower costs, which would allow it to pass on savings to Canadian apparel manufacturers, making them more competitive with foreign garment producers in both the domestic and international markets. Kufner also claimed that Canadian apparel manufacturers are demanding the imported interlinings and that the issue is not one of price, since the subject fabrics are not considered substitutable in the marketplace. Kufner is of the view that, in an industry where minute differences, such as the “feel” of the fabric or a small crease, are the basis for success and failure, there are no substitutable fabrics for those for which tariff relief is requested.

The Department of Foreign Affairs and International Trade (the Department) informed the Tribunal that Canada maintains quota restraints on polyester filament woven fabric, including any woven fabric mixed mainly or solely with polyester filaments, imported from Poland, the Republic of Korea and Taiwan. This coverage, therefore, includes the subject fabrics of tariff item Nos. 5407.51.90 and 5903.90.29, where the latter woven fabric contains 50 percent or more by weight of textiles. Should a favourable recommendation be made by the Tribunal, the Department could consider a request for ex-quota entry of the textile inputs.

ANALYSIS

The Minister’s terms of reference direct the Tribunal to assess the economic impact on domestic textile and downstream producers of reducing or removing a tariff and, in doing so, to take into account all relevant factors, including the substitutability of imported textile inputs for domestic textile inputs and the ability of domestic producers to serve the Canadian downstream industries.

According to Peerless, there is no domestic production of fabrics identical to or substitutable for the subject fabrics. This position was originally contested by CHC and Canada Pad, which argued that substitutable fabrics are available in Canada. In this connection, Weston stated that fabrics identical to the subject fabrics are not produced in Canada, but that substitutable fabrics are available.

As a result, however, of discussions between Peerless, CHC and Canada Pad, an agreement was reached with respect to the request for tariff relief. Under the agreement, CHC and Canada Pad supported, or at least no longer opposed, the request for tariff relief for three of the fabrics covered by the investigation, namely, fabrics B131, 3249 and V901, and specific wording and specific tariff items were proposed. With respect to fabric R791, Peerless agreed to discontinue its request for tariff relief. In these circumstances, pursuant to a request by Peerless, the Tribunal deemed that a public hearing was no longer required.

Based on the evidence, the Tribunal notes that CHC produces the more conventional one-way stretch fabrics, whereas Peerless generally uses two-way stretch fabrics (fabrics B131 and 3249) to improve the “feel” of its garments. In addition, the Tribunal notes that CHC does not produce fabrics substitutable for fabric V901, nor does it intend to do so in the near future. The Tribunal also notes that Peerless discontinued its request for tariff relief in respect of warp-knit fabric, stitch-bonded with polyester filament yarns, containing a web of polyester staple fibres with inserted weft core spun yarns consisting of nylon monofilament, wrapped with polyester staple fibres and covered with viscose rayon staple fibres, of tariff item No. 6002.43.90 (fabric R791). CHC maintained that it produces woven fabrics (samples AF2 and 1640) substitutable for fabric R791.

On the basis of the information available to the Tribunal, granting tariff relief would result in yearly benefits to Peerless and other importers of well over \$300,000. Revenue Canada indicated that there would be no additional costs, over and above those already incurred by it, to administer the tariff relief under the terms of the agreement reached between Peerless, CHC and Canada Pad.

Although Freudenberg, a US manufacturer of interlinings, opposed Peerless's request for tariff relief, the Tribunal, when conducting an investigation into requests from Canadian producers for tariff relief on imported textile inputs, assesses the economic impact on Canadian textile and downstream producers. The Tribunal also notes that Freudenberg did not provide detailed information concerning its plans to market, in Canada, a range of allegedly substitutable fabrics. In the circumstances, the Tribunal finds no compelling reason to conclude that the agreement reached between the interested parties will not be beneficial to Canada.

In light of the foregoing, the Tribunal concludes that there would be net economic benefits of granting the tariff relief, on the basis of the agreement reached between the interested parties.

RECOMMENDATION

The Tribunal hereby recommends to the Minister that tariff relief be granted, for an indeterminate period of time, on importations from all countries, of the following fabrics for use as interlinings in the manufacture of men's apparel:

- (1) woven fabric of textured polyester filament yarns, partially coated with hot melt adhesive, with a 4 percent minimum stretch in the warp and a 12 percent minimum stretch in the weft as measured by ASTM specification D3107-75, the product weight exceeding 70 g/m², but not exceeding 95 g/m², of subheading No. 5407.51 or 5903.90;
- (2) warp-knit fabric of textured and non-textured polyester filament yarns, partially coated with hot melt adhesive, with a 4 percent minimum stretch in the warp and a 12 percent minimum stretch in the weft as measured by ASTM specification D3107-75, the product weight exceeding 70 g/m², but not exceeding 95 g/m², of subheading No. 5903.90 or 6002.43; and
- (3) warp-knit fabric of polyester filaments and polyester staple fibres, partially coated with hot melt adhesive, the product weight not exceeding 55 g/m², of subheading No. 5903.90 or 6002.43.

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